CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

Excise Appeal No. 54157 of 2018

[Arising out of Order-in-Appeal No. 439-440 (SM)CE/JPR/2018 dated October 15, 2018 passed by the Commissioner of Central Taxes (Appeals) Jaipur]

HONDA CARS INDIA LIMITED ... **Appellant**
SPL-1(D), RIICO Industrial Area
Tapukara, District Alwar
Rajasthan 301707.

Versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX, CUSTOMS AND CENTRAL EXCISE, ALWAR. ... **Respondent**
A Block, Surya Nagar,
Alwar, Rajasthan 229001.

APPEARANCE:

Shri B L Narasimhan and Kruti Parashar, Advocates for the Appellant
Shri Rakesh Agarwal , Authorised Representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

DATE OF HEARING : February 09, 2021
DATE OF DECISION : February 22, 2021

FINAL ORDER NO. 51046/2021

PER MR RAJU

This appeal has been filed by M/s. Honda Cars India Ltd against demand of reversal of CENVAT Credit in terms of Rule 6(3A) of the CENVAT Credit Rules, 2004.

2. Learned Counsel for the appellant pointed out that the appellants are engaged in packing and labelling of automobile parts and safety headgear. The appellants are also engaged in trading of dyes which they get manufactured on job work and appellants are also engaged in supply of manpower services for manufacture of

dyes inhouse. The appellants were therefore, engaged in activities which were liable to tax and also in trading activities which were not liable to service tax. Consequently, they became liable for reversal of CENVAT Credit in terms of Rule 6 of CENVAT Credit Rules, 2004. The appellants were not maintaining separate records of receipt, consumption of inventory of inputs and input services in terms of Rule 6(2) of CENVAT Credit Rules, 2004 and therefore, they opted to pay CENVAT Credit as determined under Rule 6(3A) of CENVAT Credit Rules, 2004 in terms of Rule 6(3)(ii) of CENVAT Credit Rules, 2004. The appellants were from time to time reversing the credit as prescribed under Rule 6(3A) in terms of formula prescribed therein. The appellants were submitting the detailed calculation on said reversal to the Revenue from time to time on annual basis. Learned Counsel pointed out that the amount of reversal was calculated by them in terms of Rule 6(3A)(c)(iii). He pointed out that the said clause (c) of sub-rule 3A of Rule 6 reads as under:

> "(c) the manufacturer or the provider of output service shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely :-
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> (i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;
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> (ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by I, where J denones the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;
>
> (iii) The amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services = (M/n) multiplied by P, where (M) denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year. [N] denotes goods manufactured and removed, during the financial year, and [P] denotes total CENVAT Credit taken on input services during the financial year; "

3. He pointed out that the term 'P' in the aforementioned formula was taken to be the service tax attributable only to the common service used for both taxable and exempted activities.

4. Learned Counsel pointed out that Revenue was of the opinion that the term 'P' should be the total service tax taken by the appellant and not merely the service tax credit of common inputs service taken by them. Therefore, the demand in show cause notice was issued and later confirmed by the Revenue requiring the appellant to pay CENVAT Credit. The learned Counsel pointed out that the issue raised by the Revenue has been settled by Tribunal in the case of **Reliance Industries Limited**[1]**.** He further pointed out that the matter was adjudicated by the Revenue before the Hon'ble High Court of Gujarat and Hon'ble High Court had approved that decision by stating that no question of law arises. He further pointed out that said decision has been followed by the Tribunal in the case of **E-Connect Solutions (P) Ltd. Vs. Commissioner of CGST & CE, Chennai Outer Commissionerate**[2]**.** He further pointed out that in their own case similar relief has been granted by the CESTAT, Chennai in order reported in **2020 (3) TMI 523-CESTAT-CHENNAI.**

5. He further pointed out that Rule 6(3A) was subsequently amended by Notification No. 13/2016-CE (NT) dated March 01, 2016. The said amendment also confirmed the stand taken by the appellant that only a part of the common CENVAT Credit is to be reversed and not full CENVAT Credit. He pointed out that while issuing the said notification, the CBEC also clarified vide DOF No. 334/8/2016-TRU dated February 29, 2016 that the said rule has been redrafted with the objective of simplifying and rationalising

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[1] **[2019 (3) TMI 784-CESTAT Ahmedabad]**

[2] **Final Order No. 51579/2020 dated 14.09.2020**

the same without altering the established principle of reversal of said Credit.

6. He further pointed out that they were from time to time on monthly basis were reversing the credit in terms of Rule 6(3A) and submitting the same to the Revenue. He pointed out that extended time of limitation has been invoked while stand of the appellant was known to the department during the entire period and therefore, there was no intention of the appellant to evade or suppress any information from the Revenue. In view of the above, learned Counsel argued that the said order needs to be set aside and appeal allowed.

7. Learned Authorised Representative relies on the impugned order. He argued that the plain and simple language of the provision needs to be implemented and there is no scope for intendment in law. Learned Authorised Representative relied on the decision of Apex Court in the case of **L R. BROTHERS INDO FLOORA LTD. VS. COMMISSIONER OF CENTRAL EXCISE**[3] to assert that the amendment made in law cannot be applied retrospectively.

8. Learned Authorised Representative relied on the decision of Hon'ble Apex Court in the case of **Union of India versus Deoki Nandan Agarwal** [4] to assert that it is not duty of the Court to either enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. He argued that Court cannot re-write , recast or reframe the legislation for the reason that it has no power to legislate. He argued that Court cannot add words to a statute or read words into it which are not there.

9. Learned Authorised Representative argued that provisions of law are very clear and Rule 6(3A) uses the words " total CENVAT Credit taken on input services during the financial year". He argued

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[3] **[2020 (373) ELT 721 (SC)]**

[4] **[AIR 1992 SC 96]**

that it is not proper for Tribunal to change the meaning of the aforementioned expression and to restrict it to common inputs.

10. We have gone through the rival submissions. We find that the essential issue relates to interpretation of the term "CENVAT Credit taken on input services during the financial year" appearing in clause (c) (iii) of sub-Rule 3A of Rule 6 of CENVAT Credit Rules, 2004 as they were prior to amendment on March 01, 2016. This issue has been deliberated and decided in the decision of the Tribunal in the case of **Reliance Industries** (supra). In the said decision Tribunal has observed as follows:

> "7. We have carefully considered the submissions made by both the sides and perused the record. The limited issue to be decided in this case is that for the purpose of calculating the Cenvat credit for reversal in terms of Rule 6(3A) as per of formula given therein, whether the total Cenvat credit means it is including the Cenvat credit of input services exclusively used for dutiable product should be taken or total Cenvat credit of only common input service should be taken. Before proceeding, it is necessary to read the relevant Rule 6(1)(2)(3) pre and post amendment notification 13/2016- CE dated 01.3.2016, which is reproduced:-
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> **RULE 6. [Obligation of a manufacturer or producer of final products and a provider of output service].**
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> 6. (1) The CENVAT credit shall not be allowed on such quantity of input used in or relation to the manufacture of exempted goods or for provision of exempted services, on input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services], except in the circumstances mentioned in sub-rule (2):
>
> [**Provided** that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs used in the manufacture of goods cleared without payment of duty under the provision of that rule.]
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> (2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for—
>
> (a) the receipt, consumption and inventory of inputs used—
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> (i) in or in relation to the manufacture of exempted goods;
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> (ii) in or in relation to the manufacture of dutiable final products excluding exempted goods;
>
> (iii) for the provision of exempted services;

(iv) for the provision of output services excluding exempted services; and

(b) the receipt and use of input services—

(i) in or in relation to the manufacture of exempted goods and their clearance up to the place of removal;

(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;

(iii) for the provision of exempted services; and

(iv) for the provision of output services excluding exempted services,

and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).]

(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow [any one] of the following options, as applicable to him, namely:—

(i) pay an amount equal to [six] percent of value of the exempted goods and exempted services; or

(ii) pay an amount as determined under sub-rule (3 A); or

(iii) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under subclauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment:

Provided that if any duty of excise is paid on the exempted goods, the same shall he reduced from the amount payable under clause (i):

Provided further that if any part of the value of a taxable, service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be [six] per cent of the value so exempted:]

[**Provided *also** that in case of transportation of goods or passengers by rail the amount required to be paid under clause (z) shall be an amount equal to 2 per cent of value of the exempted services.]

Explanation. I — If the manufacturer of goods or the provider of output service, any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided him, and such option shall not be withdrawn during the remaining part of the financial year.

[Explanation II—For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in relation to the manufacture of exempted

goods and their clearance upto the place of removal or for provision of exempted services.

[**Provided *also** that in case of transportation of goods or passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 per cent of value of the exempted services.]

Explanation I—If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

"Explanation II—For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service."

Explanation III—No CENVAT credit shall be taken on the duty or tax paid on any good and services that are not inputs or input services.]

(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:—

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:—

(i) name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to exercised;

(iii) description of dutiable goods or output services;

(iv) description of exempted goods or exempted services,

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay provisionally, for every month,—

(i) the amount equivalent to CENVAT credit attributable to inputs used in or relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) = (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) the amount attributable input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of 10 Appeal No. E/12524-12530/2018 & E/12595-

12596/2018 exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) the manufacturer of goods or the provider of output 'service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:—

(i) the amount of CENVAT credit attributable to inputs used, in or in relation to manufacture of exempted goods, on the basis of total quantity of Inputs used in or in relation to manufacture of said exempted goods, denoted as H;

(ii) the amount of CENVAT credit attributable to inputs ,used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the financial year and L denotes total Cenvat credit taken on inputs during the financial year minus H;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance up to the place of removal or provision of exempted services = (M/N) multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, M denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and N denotes total CENVAT credit taken on input services during the financial year;

(d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

(e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of Output service may adjust the excess amount on his own, by taking credit of such amount,

(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely —

(i) details of CENVAT credit attributable to exempted goods and exempted ser 4L vices, monthwise, for the whole financial year, determined provisionally as Per condition (b),

(ii) CENVAT credit attributable to exempted goods and exempted services for the:' whole financial year, determined as per condition (c), (iii) amount short-paid determined as per condition (d), alongwith the date of payment of the amount short-paid,

(iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and

(v) credit taken on account of excess payment, if any, determined as per condition (f);

(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no 79a[output] service was provided in the preceding financial year, then the manufacturer of goods or the I of output service is not required to determine and pay such amount provisionally for L, month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

(i) where the amount determined under condition (h) is not paid within the said due date i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent per annum from the due date till the date of payment.

8. From the reading of Rule 6(1), it is clear that only in respect of input or input service used in exempted goods are not allowed. That means input or input service used in taxable service/dutiable goods, Cenvat credit is allowed. Sub-rule (2) of Rule 6 is only as an option that if any input or input services used in exempted goods, credit should not be allowed and only with this intention some mechanisms for expunging Cenvat credit attributed only to the exempted goods are provided. As per clause (b) (ii) & (iv), it is clearly provided that entire credit in respect of receipt and use of inputs/ input service is allowed when such input and input service is used in dutiable final products and taxable service. However, nowhere in Rule 6 it is provided that the input or input service used in dutiable goods shall not be allowed. The Revenue is only interpreting the term "total Cenvat credit" provided under the formula. If the whole Rule 6(1)(2)(3) is read harmoniously and conjointly, it is clear that "Total Cenvat Credit" for the purpose of formula under Rule 6(3A) is only total Cenvat credit of common input service and will not include the Cenvat credit on input/ input service exclusively used for the manufacture of dutiable goods. If the interpretation of the Revenue is accepted, then the Cenvat credit of part of input service even though used in the manufacture of dutiable goods, shall stand disallowed, which is not provided under any of of the Rule of Cenvat Credit Rules, 2004.

9. An amendment made in Rule 6(3A) by Notification No. 13/2016-CE (NT) dated 01.03.2016. The amended sub rule (3A) of Rule 6 of Cenvat Credit Rules, 2004 is reproduced below:-

Sub-rule (3A) as per Notification No. 13/2016-CE (NT) dated 01 Mar 2016

(d) for sub-rule (3A), the following sub-rule shall be substituted, namely:-

"(3A) For determination of amount required to be paid under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration number of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided ;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely :-

(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;

(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of nonexempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;

(iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as,-

C = T - (A + B);

Explanation.- Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.

(iv) the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, -

D = (E/F) x C;

where E is the sum total of –

(a) value of exempted services provided; and

(b) value of exempted goods removed, during the preceding financial year; where F is the sum total of-

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed, and

(d) value of exempted goods removed, during the preceding financial year :

Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be fifty per cent. of the common credit;

(vi) remainder of the common credit shall be called eligible common credit and denoted as G, where,-

G = C - D;

Explanation.- For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.

(vi) where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of fifteen per cent. per annum;

10. From the above it can be seen that when anomaly was noticed, the Government has substituted the sub-rule (3A). The legislators very consciously substituted the Rule with intention to give a clarificatory nature to the provision of sub-rule (3A) so as to make it applicable retrospectively. It was all along not the intention of the Government to deny Cenvat credit on the input/ input service even though used in the dutiable goods. Keeping the said view in mind, the substitution in sub Rule (3A) of Rule 6 was made. Therefore, the substituted provision of sub-Rule (3A) shall have retrospective effect being clarificatory."

11. The said decision in the case of **Reliance Industries** (supra) was challenged by the Revenue before the Hon'ble High Court of Ahmedabad and following questions of law were framed by the High Court:

"2. The appellant has proposed the following questions as the substantial questions of law in the appeal

(i) Whether the Hon'ble Tribunal, is right to hold that the Notification No. 13/2016 –CE(NT) dated 01.03.2016 (effective from 01.04.2016) issued by the Government of India, Ministry of Finance, Department of Revenue, amending the provision of Rule 6 of CENVAT Credit Rules, 2004 has retrospective effect ?

(ii) Whether the Hon'ble CESTAT is right to hold that the amendment to rule 6(3A) by Notification No. 13/2016 –CE(NT) dated 01.03.2016 of the CENVAT Credit Rules, 2004 is clarificatory in nature ?

(iii) Was the Hon'ble CESTAT correct in holding that "Total Cenvat Credit for the purpose of formula under rule 6(3A) is only total Cenvat Credit of common input service and will not include the Cenvat Credit on input//input service exclusively used for manufacture of dutiable goods?

(iv) Was the Hon'ble CESTAT correct in holding that the Commissioner (Appeals) at Rajkot had the jurisdiction to hear the Appeals of the Respondent ?"

12. After deliberating on the issue vide interim order dated January 23, 2020, the Hon'ble High Court admitted the Appeal by framing the following questions:

"3. We are inclined to admit this appeal only on the following two questions.

(i) Whether the Hon'ble Tribunal, is right to hold that the Notification No. 13/2016–CE(NT) dated 01.03.2016 (effective from 01.04.2016) issued by the Government of India, Ministry of Finance, Department of Revenue, amending the provision of Rule 6 of CENVAT Credit Rules, 2004 has retrospective effect ?

(ii) Whether the Hon'ble CESTAT is right to hold that the amendment to rule 6(3A) by Notification No. 13/2016 –CE(NT) dated 01.03.2016 of the CENVAT Credit Rules, 2004 is clarificatory in nature ?"

13. As regards the other two questions raised by the Revenue, the same were not framed as the same were not held to be substantial questions of law. The said decision in **Reliance Industries Ltd.** was also followed by the Tribunal in the case of **E-Connect Solutions (P) Ltd.** (supra) and thereafter in the appellants own case reported in **2020 (3) TNI 523 CESTAT Chennai.** Since the matter has been decided by Co-ordinate Benches, we respectfully follow the same.

14. We also find that the appellants have been from time to time submitting intimation under Rule 6(3A) of CENVAT Credit Rules, 2004 showing full calculation of the manner in which they have arrived at the reversal of CENVAT Credit. In these circumstances, it is apparent that there was no suppression or mis-declaration on the part of the appellant and, therefore, the extended period of limitation could not have been invoked.

15. It is also seen that with effect from March 01, 2016, the law has been amended clearly specifying that reversal of CENVAT Credit only on common inputs service is required. While clarifying the said issue, at the time of issue of said amendment, the Government of India vide DOF No. 334/8/2016-TRU dated February 29, 2016 clarified as follows:

> "(h) Rule 6 of Cenvat Credit Rules which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit."

16. From the above, it is apparent that the amendment made is of clarificatory nature and the principles of reversal of credit remains the same.

17. Learned Authorised Representative has relied on the following observation of the Hon'ble Apex Court in **Deoki Nandan Aggarwal** (supra) :

> ".....It is not duty of the Court to either enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot re-write , recast or reframe the

> legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts."

18. The aforesaid observation of Hon'ble Apex Court pertains to a situation where there is no ambiguity in law. In the instant case, it is seen that Rule 6 of CENVAT Credit Rules, 2004 deals solely with the situation of CENVAT Credit resulting from exempted services and exempted products. The rule itself is clearly designed to deny partial credit of CENVAT credit taken on inputs/input services used in exempted goods and services. The CENVAT credit of other kind has no relevance in this rule. In these circumstances, it is obvious that reference to CENVAT Credit in the said Rule would be reference to CENVAT Credit on common input services which are used for exempted products and services as well as for dutiable products and services.

19. In view of the above, impugned order is set aside and appeal is allowed.

(pronounced in the open Court on February 22, 2021)

(JUSTICE DILIP GUPTA)
PRESIDENT

(RAJU)
MEMBER (TECHNICAL)

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